



The Criminal:

*An Address to the Perthshire
Society of Natural Science;
12th December, 1901.*

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(Reprinted from the Perthshire Constitutional.)

Although this society is mainly and rightly concerned with natural science in relation to our own locality, and has won a high place in the scientific world by the long-continued and ardent devotion of its members to the aims and objects for which it was originally constituted, it has throughout its history kept an open door to every kind of scientific work. It has been educational in the widest sense. In diverting attention for a little time to problems more distinctively human, I feel that the interests of our members may be stimulated to good purpose—even in relation to the squalid and repulsive subject now to be briefly considered. In those later days men are more and more concerned with the social welfare—"we are all socialists now." One need not inquire how far these evolutionary ideas are purely altruistic. At least we may admit that the plague spot of crime is a danger to the common weal; and that, as hygienic measures have reduced mortality from preventible diseases, so we may expect more rational methods of dealing with criminals to raise the national standard of morality. I say more rational methods with every emphasis, for we have not yet attained to a procedure which can be characterised by appropriate adjectives. Our dealings with criminals are as yet ill-contrived and haphazard, mainly because of our tenacious hold on ancient formulæ and because of our

pre-occupation with the crime, regardless of the criminal. As medicine is becoming emancipated from the narrow view that the disease is the entity, and is proceeding on the idea that the person is the object of consideration, so we must urge that the criminal, the human soul, is the problem and not the mere accident of his violation of statutory laws.

In the childhood of nations the criminal law naturally took the precedence of civil law, and one might add that the successful law-breaker was rewarded by the position of power. But even then, as Sir Henry Maine said, it must not be supposed that "a conception so simple and elementary as that of a wrong done to the State was wanting in any primitive society." No community could exist unless there were a general agreement that each individual should surrender freedom of action. Speedy disintegration would be the fate of a lawless tribe. Crimes at first were therefore only referable to what menaced the welfare of the community, and in time the community proceeded to assess damage done by one person to another, and even to assist in the rectification of the injury. The great body of legal enactments which has been the slow growth of ages is not even yet complete. What were formerly considered criminal offences have been quietly dropped into oblivion. Witchcraft and its legal relations are now only of antiquarian interest. On the other hand, in the evolution of the race, what was formerly considered no crime is now so highly reprobated that it must be dealt with as an offence punishable by law. Drunkenness in itself is not even yet officially recognised as a crime, yet there is every indication that it will be so treated before the century is much older. It is generally regarded as a vice, as a personal affair; although it is also undeniably more or less directly a wrong inflicted upon others; and just in proportion to that wrong, punishment is demanded—or rather reform is imperative in the interests of those dependant upon the drunkard as well as in the interests of the State.

This is no new idea. The great Lord Mansfield, whose voice was ever for freedom, who declared the slave who touched the shore of England free, looked upon drunkenness as a crime, and held that a criminal act committed in drunkenness was punishable on the very ground that one crime could not excuse another.

I have used these words a vice and a wrong, and it is essential to define these terms when they are so used. The problems of vice, crime, and insanity are intimately related. It is clear that they can be broadly differentiated; but they are so involved in

many cases, their boundaries are so indefinite that difference of opinion must exist in regard to individual persons. It is a vulgar reproach to medicine that doctors differ, and in no environment are their differences more accentuated than in the cold clear light of the courts of law. But I would again quote Sir Henry Maine—one of the greatest of Englishmen—"A friend of mine once said he had no belief in medicine, it was an art which made no progress. It may be worth while to examine the particle of truth which makes such a view possible to highly intelligent men looking at it from the outside. All the contributory arts and sciences, subordinate to one master art, the art of healing—physiology, pathology, toxicology, chemistry—are advancing at a vast rate, and whenever all these arts and sciences are complete, medicine will be one of the most complete and perfect of all the arts. But, by the very necessities of their profession, medical men are compelled to act as if an art was complete which is only completing itself. We are constituted of too frail a structure to be able to wait for the long result of time, and our infirmities place medical men at a disadvantage compared with other men of science by forcing them to anticipate a consummation which may be near but has not yet been reached."

True, neither men, nor law, nor medicine can afford to wait until science is complete, while injustice is being done to criminals and to the State upon which they prey. Yet, tentatively, we may advance to a clearer conception of the subject in hand, and, tentatively, apply tests which will give us better reasons and remedies which will give us better results.

The essence of morality lies in the postponement of the immediate gratification of desire in order to compass a more distant benefit. The higher the level of morality the more marked is this fixity of purpose. Savages are impulsive, incapable of continuous labour, easily moved to gratify their immediate desires. Sloth and gluttony, drunkenness if possible, alternating with fierce energy and semi-starvation characterise the lowest orders of civilisation. Criminals in their orgies, in their laziness, in their incapacity for sustained work reproduce these features of savage life. They are atavistic — they hark back to a long forgotten ancestry. I will not labour that point. It is evident in the occurrence of supplementary mammae and other similar physical phenomena that here and there modern man tends to reversion to lower forms of mammalian life. The vicious, the criminal, and the insane labour under a certain incapacity, and the question of responsibility thus becomes momentous. Can this question

be adjusted to individual cases, and can an answer be given calculated to be serviceable in social conditions? The answer must be in the affirmative. Indeed it has been well proved in Scotland. Laurie, the Arran murderer, was found guilty and condemned to death; but upon the report of a medical commission the Crown was satisfied that the extreme penalty should not be carried out. He was held to be partially responsible—not insane to be remitted to the criminal lunatic asylum; but in so far answerable for his criminal conduct as to be punished by penal servitude for life, and his subsequent history has shown the propriety of that opinion. I regard that case as the beginning of a new era in our criminal law—a recognition of partial responsibility demanding mitigation of punishment, yet punishment and long-continued segregation from the community.

You will observe therefore that, although one may impute to the vicious person a certain incapacity to postpone the immediate gratification of desire, it by no means follows that his incapacity is of such a profound and far-reaching nature as to exempt him from punishment. I use the word punishment in no sense of retaliation, for the great majority of the vicious and the criminal stand more in need of reform than of punishment. Still, if you take such a person from the enjoyment of his bestial surroundings and limit his liberty, and above all cause him to do useful work, his life becomes a punishment more or less severe. To begin with, at all events, he does not want to be reformed. The sheer idleness, the recurrent orgy, the outburst of excitement is his life and his aim in life.

When vice becomes wrong-doing—that is to say when for immediate gratification of desire a wrong is done to others—we have to consider a more complicated state of circumstances. If the wrong-doing has a direct result then the law is broken—compensation and punishment ensue. The theory of legislation is that when the injury affects the injured party alone he is left to obtain compensation by his own efforts; but that when the injury is of such a nature as to affect injuriously not only the person primarily wronged, but the entire community as well, then the community avenges its own wrong by punishing the malefactor. It may permit the victim to obtain compensation from his injurer, but the wrong-doer must still be punished. It is thus that communities are prevented from disintegration. The community protects itself in punishing the wrong-doer.

Not only does the criminal seek immediate gratification of his desires, but he compasses his ends in an

anti-social way. The adaptation of the criminal to the social system is faulty, and with social advance the laws are relaxed, thus permitting greater freedom to those least qualified to exercise it. This relaxation of the stringency of written law and custom is an inevitable result of greater cohesion in the elements of the State. In earlier ages the want of self-restraint, the inability to restrict undue freedom of action—the uncultivated powers of inhibition rendered laws more stringent. In those circumstances nearly all fundamental moral enactments were prohibitions, enjoining not the doing of acts, but the leaving of acts undone—consequently the form is “Thou shalt not.”

At the same time the chief enactments dealt with three outstanding institutions:—1 Wrongs against the Government, or treasons. That is to say public wrong-doing. Naturally in a more immature social condition the governing power was maintained with great intensity, and treason ranked high as an offence. And to the present day wrong-doing against the agents of government (e.g. assaults on the police) are still viewed with greater severity than wrongs to private individuals.

2. Religion. The institution of the State religion was naturally guarded by laws of the greatest stringency. Underlying this stringency is, of course, the fact that religion constitutes a rule of conduct intimately associated with self-sacrifice; and whatever tends to self-sacrifice tends to the conservation of the community.

3. Custom—solidarity is maintained by custom. It promotes uniformity of action, checks individual aberrations, and keeps the community together. Even now the innovator is the subject of reprobation, no matter how wise his councils may be; and if the law does not punish offences against the Government, religion and custom with its former severity, the community views the “offenders” with reprobation to an extent which may entail social ruin as assuredly. Yet the time may come when innovations or customs will be judged on their merits, and all classes of private wrong-doing will be dealt with as injurious to the community.

We have seen how vice and wrong-doing are akin, and must but briefly refer to insanity as another form of incapacity. Insanity is a deeper retrogression than vice or wrong-doing. As no two castles crumble to decay in precisely the same manner, so are there diversities in the ruin of mind. An examination of these diversities would lead us far afield, and we must be content to consider insanity broadly as a disorder of the adjustment of the person to circumstances.

Here again there is the same gratification of immediate desire irrespective of future benefits. But the insane wear their rue with a difference. Choice is implied—considering virtue as opposed to vice—the power of selection, moral inhibition. If there be no power of choice then there can be no vice. Or there may be an obscuration of the faculties rendering determination a futility. Or there may be a weakening of the moral power, apart from notable intellectual defect.

Vice may be the expression of insanity; at one end of the scale the person may be enfeebled to vicious conduct; at the other extreme there may be no vestige of enfeeblement but a deliberate choice on weighing the advantages of conduct, good or bad.

This leads us to a consideration of heredity, environment, training, habit, and disease. As conduct is the only true test of insanity, so are these factors the true operative causes.

Let us consider conduct in these various relations. One man will lead a reasonable life and leave his family decently provided for—the normal social instinct in due balance. Another habitually exceeds his income and dissipates his capital—a form of wrong-doing only too common. Another afflicted with degenerative disease of his brain will squander millions which he never possessed. Vice consequent on insanity, and vice causative of insanity are two very different conditions, yet they are but too often confused in the public estimation.

Ravaillac, the insane murderer of Henry IV., was killed by horrible tortures. Hadfield, who attempted to slay George III., was cared for in an asylum during the rest of his life. The change in legal procedure in such cases is remarkable. Both were crimes against Government, but the treatment of the criminal was entirely different. Lord Bramwell summed up the whole matter in a nutshell—"Could he help it?" That is the question to be discussed before the courts in these latter days, and the evidence must show whether the process of adjustment of self to surroundings is intact or not. If the criminal have the power of adjustment then he is sane, if he have not he is insane. In difficult cases, on the borderland so to speak, there must be a difficulty in coming to a decision. One might as well try to stake off the foundations of a rainbow, as to absolutely determine, in such a case. It is the weight of evidence which must eventually tell, for or against, just as Orton was proved to be Tichborne by the sheer accumulation of slight indications and not by a single fact in evidence, on one side or the other.

Holding these opinions, there is room for the ade-

quate debate of a doubtful case as between lawyers and as between doctors. Further, the very heinousness of the crime of murder in a highly-civilised community now raises the question which Lord Bramwell put so concisely—Could he help it? and I doubt not that jurymen, feeling the dread responsibility of their verdict, gladly give the benefit of the doubt, when doubt can honestly be expressed.

Ferri has classified criminals as follows:—I. Criminals by passion; II. occasional criminals; III. professional criminals—a. degenerate, b. clever; IV. instinctive criminals—a. moral insane, b. atavistic, c. atypical, d. morbid; V. insane criminals.

I. As to criminals by passion. These are of the impulsive type, and generally commit crimes against the person—cutting and wounding, etc. I do not purpose to detain you with further remarks on them, but pass on to the important class of

II. Occasional criminals. It is in reference to these persons that our penal system is so thoroughly detrimental. They are persons who fall into crime by sudden temptation. Of such an one was it not Robert Hall who said—"There goes, but for the grace of God, Robert Hall." Quite lately Mr Dewar of Dundee has testified to the efficacy of mild measures in dealing with these offenders—especially when young. And it is specially the young occasional criminal who requires to be sedulously protected from the contamination of prison life. I plead for milder measures, and the separate treatment, and the after-care of occasional criminals. They may be saved, or they may be destroyed at the critical moment of life.

III. The third class—the professional criminals, are the important class relative to sociological conditions. They are either below or above the average man in physique and mental powers, and accordingly their treatment must be vastly different. We ought never to forget that here, in Perth, the earliest work in criminal anthropology was done by Dr Bruce Thomson at the General Prison. He was a truly remarkable man, and, taking the hint from Morel and Despine, he closely observed the prisoners under his care, accumulating his materials and publishing the results of his observations in the most convincing style. (To those who are interested in the scientific workers of Perth, I may mention that a short account of his life will be found in the Dictionary of National Biography which I compiled with some trouble, so soon does our memory fade.) Bruce Thomson's observations are now familiar to students of criminology, enlarged and corroborated by many more recent workers; but he clearly set forth the disabilities of the degenerate

criminal and showed that he was not as other men—mentally, morally, nor bodily. I need not go over the ground to-night, the task would try your patience; but I may say that the latest observations by Dr Norwood East, published in the "Journal of Natural Science" for October, prove to demonstration the physical and moral insensibility of the criminal. Here is a summary of his paper, after minute and lengthy observance on convicts in Portland Prison.

The normal individual has more acute moral and physical sensibility than the criminal.

Considered in classes, the accidental, occasional, and professional criminal represent three degrees of moral and physical insensibility.

The influence of education is unimportant.

Crimes against the person, commonly—passion crimes, have least moral and physical insensibility. In an ascending scale come crimes against distant property and then crimes against near property.

Here, then, we have a group of criminals of a low standard of bodily structure, of sensation, of intellect, of morals. They are not possessed of the sane mind in the sane body—using the term sane as indicative of perfect health and perfect development. One has only to observe them in the airing yards of the prison to recognise their shambling gait, their stunted, ugly, misshapen bodies, their vacuous faces, and their low physical condition generally. They are in a word, degenerate. Now, that is an expression fitted to delight the devotee of custom to the confusion of the innovator. Is a man to be condemned because of the length of his ears or the eccentricity of his appearance? By no means, but when a professional criminal presents such a bodily configuration we must recognise that it is a common trait of his class. Even Lombroso, who is an extremist in criminal anthropology, declares that there is "no criminal type but that all that can be asserted is a greater frequency of these anomalies in professional criminals." This is an opinion to which one can subscribe with easy confidence.

Do we treat these degenerate professional criminals as they ought to be treated? I say unhesitatingly no. We must look to America for guidance in this matter. I visited the Elmira Reformatory in 1897, and there found the most hopeful experiment the world has yet seen. Of course it has been an experiment "pour rire" in the opinion of the jocular journalist, but even Sir Edmond du Cane was moved to approve of some such institution in this country, and suggested that Dover Prison might be adapted for such a use. The appalling truth is that the professional criminal is young; our prisons are filled with mere lads. And

it is just these lads who are sensible to the evil influences of prisons, and might be converted into passable citizens if they were properly cared for. Take the results of the Fechney School; they are as good as those of any other school in respect of ultimate results in citizenship. That is very remarkable. Boys who are burdened with an unfavourable heredity, removed to a hygienic and moral environment, turn out capable and worthy. So with Elmira, the results have been, beyond hope, satisfactory. These results have not been hidden under a bushel, they are open to the world and, however politics have interfered with the development of the institution in later years, Elmira is still at work rescuing the fallen.

The crucial difficulty is to have these professional criminals detained by an indeterminate sentence, and liberated on parole when their necessarily long education is complete. I do not think that the difficulty is insuperable. At least, the maximum imprisonment might be awarded in every case. It is worse than useless repeating short sentences. It is an absolute failure as regards reformation. The first necessity is to improve the health and condition of the degenerate; the next is to classify them to avoid prison contamination; the next is to teach them some successful trade, and it is imperative that their tutelage should be practically at their own cost. The fallacies of trades unionism interfere grievously with this last demand. The sale of articles produced by prisoners is objected to as ruining the market for honest industry, just as the London County Council have learned that their bricklayers are only to be allowed to build 340 bricks a day instead of a possible 1000. You will not expect me to enter upon a discussion of these absurdities. I enter my plea for the true education of the professional criminal, and for his removal from the heavy list of burdens oppressing the taxpayer.

But there is another class of professional criminals, hardly less numerous, although more important in their crimes. They are above the average in physical and mental endowments. Dr Robert Anderson deals with them in the current number of the "Nineteenth Century," and the paper is of the highest importance. He claims, with exceptional authority, that if 70 of these criminals were put out of the way the whole organisation of crimes against property would be dislocated, and we should immediately enjoy a Utopian immunity from crime. There are known criminals—the aristocracy of crime—men who would have risen to eminence in any calling, but who prefer their pre-eminence in crime after a calculation of the chances. Can anything be more absurd or unsatisfactory than

our present methods of dealing with these beasts of prey? In our insular conceit we neglect the reasonable system of "dossiers" used in France. We even pooh-pooh the Bertillon system of identification. We even strain the laws of evidence for the protection of these least deserving of all criminals. I will not go so far as Sir James Fitzjames Stephen, the greatest criminal lawyer our country has seen, and advocate the death sentence for these professional criminals of daring and skill; but I do urge that as soon as it is evident that such an one has embarked on a career of crime he should be relegated to a prison for the rest of his natural life, there to earn his own livelihood, and only to be liberated on parole when there is reasonable probability of his being no longer a danger to the community.

The IV. and V. classes have been sufficiently referred to in the course of this address, and I pass to an extract from a letter lately sent to me by Dr Thom, of Barlinnie prison. It is of interest at the present time when serious crime is at its minimum in Scotland, and yet our prisons are overflowing with ordinary prisoners. Convicts under sentences of penal servitude have decreased in the last ten years from 451 to 290. On the other hand, ordinary prisoners have increased from 2043 to 2363. Those are the daily averages in custody, and this current year will show much higher numbers. Dr Thom says—"As to causes," I would speak with great diffidence, but the following may influence the numbers:—

- "1. Shorter sentences.
- "2. Good trade.
- "3. Improvement in prison dietary.
- "4. Increased police vigilance."

I think Dr Thom has exhausted the possible causes in this statement, and am sure that the first cause (shorter sentences) is greatly operative. Short sentences for accidental or occasional criminals may well find general assent, but short sentences for the recidivist—the professional criminal—are worse than useless for the reasons I have endeavoured to set before you. As to the second cause (good trade), it is an undoubted fact that this operates on the returns for drunkenness, crime, and insanity as surely as the barometric curve depends upon the fluctuations in atmospheric pressure. That is proved up to the hilt, and it is a humiliating admission to make in regard to the industrial classes of the country. Education, in the widest sense, must be the cure. The third and fourth causes (improved dietary and police vigilance) may be operative in a minor degree, but it is to the first and second we must apply remedies, and the first offers the prospect

of speediest relief. To summarise:—Reform in the treatment of the criminal is eminently desirable, in the interests of the criminal as well as in the interests of the State. The time is ripe for action. I would desire to still further extend the scope of the Prison Act of 1898, by which the judge who passes sentence is directed to study the criminal as well as the crime, his antecedents, and the circumstances of his offence, and to give directions for his management in prison. To that end the French “dossier” system should be frankly adopted, and the whole life history of the criminal should be put in evidence. Further, it should be in the power of the judge to pronounce sentence of imprisonment for an indeterminate period, in the knowledge that remission of sentence will depend upon the conduct of the prisoner. It is perhaps in this respect that we can secure a revolution of the present absurd system. But unless prisons are made “moral hospitals,” unless the staff be largely increased to permit of the proper classification of prisoners, and their education physically and mentally, we shall still have to deplore the failure of our prison system. A similar revolution in care and treatment has advanced the administration of our asylums. Formerly, a limited staff, the power of locks and keys, the mere question of custody were the ideals. Now, by a vast increase in the staff and proper classification, the useful employment of the insane (a much more difficult problem) arouses no particular attention. I urge, too, that this question of classification, of modern scientific treatment, can only be met by the appointment of skilled psychologists, as has been attained in Belgium for years past. An extension of the Prevention of Crimes Act is also much to be desired, so that dangerous criminals may be deprived of liberty for the sake of others. The “lex talionis” has had its day (its long day), and we now desire to see a law more in accordance with the higher moral level of modern times. The report of the Commissioners for Prisons (England) of last year shows that this new spirit is penetrating official minds, and we do not despair of seeing prisons become true reformatories. Then we may hope to find such paragraphs as appeared in a Dundee contemporary last week, concerning a wretched woman appearing for the hundredth time before the Police Court, as of interest only to those who dig and delve in the history of the dark ages. In February last, Mr Crackanthorpe, K.C., read a paper before the Society of Co-operative Legislators, which was one of the many signs of a new departure in criminal jurisprudence. Let us see to it that Scotland does not lag behind.

We have traversed much ground in dealing with these questions, and I have not been careful to enter upon details or to limit conclusions by an intricate statement of opposing doctrines. My purpose has rather been to paint with a large brush in the limited time at command. I could neither weary you with fallacious statistics nor detain you with an exposition of doubtful theories. The fact remains that our treatment of the criminal is eminently unsatisfactory as regards reformatory results, and unduly burdensome on the country. It constitutes a long record of failure. or perhaps one might venture more hopefully to describe it as a purblind grouping towards more rational methods, to the necessity of which the country is at last awakening.

